Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1029

LEO MITCHELL, ANNA MITCHELL, JIMMY MITCHELL, STEVEN MITCHELL AND LOUIS MITCHELL,

Petitioners,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, SECOND DISTRICT

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Petitioners respectfully pray that a writ of certiorari issue to review the judgment of the Appellate Court of Illinois, Second District, entered in the above case on May 25, 1978. A Petition for Leave to Appeal was denied without opinion by the Supreme Court of Illinois on September 28, 1978.

OPINION BELOW

The opinion of the Appellate Court of Illinois, Second District, is reported at 60 Ill. App. 3d 598, 376 N. E. 2d 1036, and is appended hereto (Appendix, pp. A1-A9). The denial of the Petition for Leave to Appeal by the Supreme Court of Illinois, entered on September 28, 1978, is unreported.

JURISDICTION

The Appellate Court of Illinois, Second District, affirmed the petitioners' judgment of convictions on May 25, 1978. The final order of the Illinois Supreme Court, which denied a petition for leave to appeal, was made and entered on September 28, 1978. The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(3).

QUESTION PRESENTED

In the present case, the trial court summarily denied to petitioners the opportunity to cross-examine for bias the sole occurrence witness against them concerning all events which transpired after the alleged incident. The question presented is whether the decision of the trial court and that of the Appellate Court of Illinois, affirming the trial court's action, are in conflict with this Court's decisions in *Tla-Koo-Yel-Lee* v. *United States,* 167 U. S. 274 (1897) and *Alford* v. *United States,* 282 U. S. 687 (1931) and deprived petitioners of their fundamental right of cross-examination as guaranteed by the Sixth Amendment of the United States Constitution.

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment, United States Constitution:

> In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him. . . .

The Fourteenth Amendment, United States Constitution:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law. . . .

STATEMENT OF THE CASE

Petitioners, Anna Mitchell, 55 years of age, and her two sons, Leo and Louis Mitchell, were convicted of robbery in a bench

trial in Ogle County, Illinois and were sentenced to one year probation, two years probation plus 30 days' incarceration and two years probation plus 30 days incarceration, respectively. Jimmy and Steven Mitchell, Mrs. Mitchell's other two sons, were convicted of armed robbery in the same trial and each received sentences of four years to four years and six months imprisonment.

All of the petitioners were originally charged with the armed robbery of Lee Evans, a Greek Gypsy, a relative of the Mitchells and the complaining witness. The complainant alleged that while travelling on the Illinois Tollway, he was forced over to the side of the road by another car and was robbed at gunpoint of $1,500 and a diamond ring. He did not identify petitioners, whom he had known for eight years, to the police as the alleged robbers until approximately seven hours after the initial report of the occurrence. At trial, however, he identified petitioners Jimmy and Steven Mitchell as holding rifles during the alleged robbery and petitioners Anna, Leo and Louis Mitchell as present at the scene

During cross-examination of the complainant, defense counsel attempted to elicit information concerning a fracas involving the Mitchells and the complainant. The following colloquy occurred:

> A. Well, after they [the Mitchells] robbed me I had a fight with them.
>
> Q. Where?
>
> A. Fifty-first and Wentworth.
>
> Q. What is there at that address?
>
> A. Police station and courtroom.
>
> Q. Where did this fight take place?
>
> A. Out of the courtroom, in the lobby.
>
> Q. What was everybody doing there?
>
> Mr. Woods [State's Attorney]: Objection, this is afterwards.
>
> The Court: Counsel, we are talking after the occurrence. If you want to state your reason for going into it or I will have to sustain the objection to going into it.

> Mr. Roe [Defense Counsel]: Your Honor, I am only attempting to bring out the fact that this witness may have some bias towards the Mitchells and there may be a series of conduct which has occurred over a period of time that reflects on his credibility.
>
> The Court: I would agree with you if it was before the occurrence. Objection sustained. (Tr. 35)

Thus, the trial court as a matter of law foreclosed any inquiry by defense counsel into the bias, prejudice and hostility of the complaining witness towards the Mitchell family due to any event occurring after the time of the alleged robbery.

Other evidence introduced by the State included the testimony of the complainant's wife who allegedly "fainted" upon hearing a gun shot and was unable to identify any of the robbers; the testimony of a police officer who stated that a subsequent search of the Mitchells' residence had not produced either the proceeds of the alleged robbery or any weapons; and the testimony of the complainant's brother, Steve Evans, who alleged that Jimmy Mitchell had made threats upon the Evans brothers' lives. The only evidence relating to the alleged robbery was the testimony of the complainant, uncorroborated as to the events and the identity of the robbers by any other testimony or physical evidence.

In their appeal to the Appellate Court of Illinois, petitioners argued, among other points, that this action by the trial court constituted a prejudicial error which effectively deprived petitioners of the exercise of their constitutional right to confrontation. The Appellate Court of Illinois, after disposing of the State's waiver argument,* held that there was other evidence in the record establishing "hostility and bad blood" between the complainant's family and the Mitchells, that further evidence of

* The State argued in the Appellate Court that the failure of the petitioners to include this point in their post-trial motion waived the issue on appeal. The Appellate Court initially stated its agreement with this argument, but went on to address the merits of petitioners' claim. (60 Ill. App. 2d at 604, 376 N. E. 2d at 1040.)

"post-crime incidents would not have added one scintilla of evidence regarding the bias of this witness" and that the trial court did not abuse its discretion in limiting the cross-examination of the complainant. (60 Ill. App. 2d at 604-605, 376 N. E. 2d at 1040.)

Petitioners subsequently presented this argument in their Petition for Leave to Appeal to the Supreme Court of Illinois, which leave to appeal was denied without opinion.

REASONS FOR GRANTING THE WRIT.

The summary denial of petitioners' constitutional right of cross-examination by the trial court, as affirmed by the Appellate Court of Illinois, displays a shocking disregard of petitioners' fundamental constitutional right to confront the witnesses against them and is directly contrary to the applicable decisions of this Court. Since *The Ottawa*, 70 U. S. (3 Wall.) 268 (1865), this Court has held the cross-examination of a witness to be a matter of right and has unhesitatingly reversed convictions resulting from a denial of that right. For the following reasons, petitioners respectfully urge this Court to grant their petition for writ of certiorari and correct the decision of the Illinois courts in this case which establishes a dangerous precedent contrary to the applicable constitutional decisions of this Court.

It cannot be doubted that "the right of cross-examination is included in the right of an accused in a criminal case to confront the witnesses against him." *Pointer* v. *Texas*, 380 U. S. 400, 404 (1965); *Smith* v. *Illinois*, 390 U. S. 129, 131 (1968). This fundamental Sixth Amendment right is made obligatory on the States by the Fourteenth Amendment. *Smith* v. *Illinois, supra*, 390 U. S. 129 (1968). The right of cross-examination includes the right of the accused to bring out any facts tending to discredit the witness by showing his testimony in chief to be biased or untrue. *Alford* v. *United States*, 282 U. S. 687, 692 (1931); *Tla-Koo-Yel-Lee* v. *United States*, 167 U. S. 274 (1897). The

denial of that right is constitutional error of the "first magnitude and no amount of showing of want of prejudice would cure it." *Brookhart* v. *Janis*, 394 U. S. 1, 3 (1966).

The specific point here urged by petitioners was the subject of this Court's decision and reversal of the conviction in *Tla-Koo-Yel-Lee* v. *United States, supra*, over 80 years ago. In *Tla-Koo-Yel-Lee*, the trial court sustained general objections to questions put to the government's witness on cross-examination relating to events after the crime and the possible bias of the witness against the defendant. This Court held:

> We think the answers to all these questions should have been permitted. The questions were directed to the purpose of showing material facts bearing upon the character and credibility of the witness, and the counsel for the defendant ought to have been permitted to proceed with his examination and obtain answers from the witness to that end. [167 U. S. at 277.]

In the case-at-bar, the trial court also summarily denied any cross-examination of the complainant, and sole occurrence witness, concerning events after the alleged crime which directly reflected upon the complainant's bias against the defendants. The trial court considered such matters to be irrelevant as a matter of law; a totally erroneous decision in light of *Tla-Koo-Yel-Lee* v. *United States, supra*. The trial court's action was affirmed by the Appellate Court which, in conflict with precedents set by this and other courts, held the trial court's decision not to be an abuse of discretion; a similarly improper basis of decision. The denial of inquiry into a subject the accused is entitled to reasonably explore *is* an abuse of discretion itself and the lost opportunity to explore that area on cross-examination is presumed to be prejudicial error. *Alford* v. *United States, supra*, 282 U. S. at 692.

The decision of the Appellate Court of Illinois establishes a dangerous precedent for the improper and summary denial of an accused's fundamental right of cross-examination, especially

where, as in the present case, the State's evidence of the crime and identification of the accused as the perpetrators thereof is based solely upon the testimony of one person whose credibility is gravely in doubt. Petitioners respectfully request this Court to review the decision of the Appellate Court of Illinois which stands in direct conflict with the applicable decisions of this Court and reaffirm this Court's decisions in *Tla-Koo-Yel-Lee* v. *United States, supra*, and *Alford* v. *United States, supra*.

CONCLUSION.

For the reasons set forth above, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

The People of the State of Illinois, Plaintiff-Appellee, v. Leo Mitchell *et al.*, Defendants-Appellants.
Second District, No. 76-308

Judgments affirmed.

Opinion filed May 25, 1978.

MR. JUSTICE BOYLE delivered the opinion of the court:

The defendants-appellants, Leo Mitchell, Anna Mitchell, Jimmy Mitchell, Steven Mitchell and Louis Mitchell, hereinafter the defendants, were charged by informations filed in Ogle County with armed robbery. During a bench trial, prior to a submission of the case to the court, the charges against the defendants, Leo, Anna and Louis Mitchell, were reduced to robbery pursuant to the State's motion. Thereafter, Leo, Anna and Louis Mitchell were found guilty of robbery, while Jimmy and Steven Mitchell were found guilty of armed robbery. On the robbery convictions, Anna Mitchell was sentenced to one years' probation; Leo and Louis Mitchell were sentenced to two years' probation plus 30 days' incarceration. On the armed robbery convictions, Jimmy and Steven Mitchell each received sentences of four years to four years and six months.

On appeal the defendants raise four issues: (1) Whether the trial court erred in denying the State's motion to reduce the convictions of Jimmy and Steven Mitchell from armed robbery to robbery; (2) Whether the trial court committed prejudicial error in limiting the cross-examination of the complainant, Lee Evans; (3) Whether the defendants were proved guilty beyond a reasonable doubt; and (4) Whether the trial court erred in denying the defense's motion for a new trial based on newly

discovered evidence. After a review of the record and briefs, we find the defendants' contentions to be without merit, and we affirm the defendants' convictions.

It would unduly prolong this opinion to set forth a complete recitation of the unique facts and the surrounding familial background data of this case. Accordingly, to the extent possible, only relevant matter necessary to our disposition will be elucidated herein.

The complaining witness, Lee Evans, a Gypsy, testified for the State that during the late hours of November 22, 1975, he and his wife, Christine, were enroute from Chicago to Davenport, Iowa, on Route 5 (hereinafter the Tollway). As the complainant and his wife were proceeding westerly, they were forced over by a car with a red light and robbed at gunpoint of $1,500 and a diamond ring. In addition, the contents of the car were strewn about the highway and one of the tires of complainant's car was shot out. The complainant identified: Jimmy Mitchell—as the person who pointed a rifle at his head and told him, "Don't move or I'll kill ya," and then shot out the tire; Steven Mitchell—as the other person who had a rifle that evening; and Leo, Anna, and Louis Mitchell—as all being present at the scene of this crime with Steven and Jimmy Mitchell. Following this occurrence, the complainant was taken to Rochelle by a passerby. The complainant, at that time, informed the police of the robbery. However, he did not tell the officers he knew the identities of the perpetrators until approximately seven hours later. On cross-examination the complainant stated that he was a Greek Gypsy, self-employed as a car salesman, and that he had known the defendants for about eight years and had been at various events and places with the Mitchells hundreds of times. He also acknowledged that the Evans and Mitchell families had an interfamily altercation at a wedding in November of 1975, allegedly due to the fact that the complainant had had sexual intercourse with the wife of one of the defendants.

Christine Evans, a Greek Gypsy and the complainant's wife, testified for the State that she did not have an opportunity to observe the robbers because she had fainted when she heard the shot. She stated that she was distantly related to the Mitchell family.

Sergeant Donald Job of the Illinois State Police testified for the State to the effect that a search of the Mitchell family residence in River Grove, Illinois, on November 26, 1975, had not produced either the proceeds of this robbery or any weapons.

Steve Evans, a brother of the complainant, testified for the State that he had received a telephone call in late November from Jimmy Mitchell, one of the defendants, in which Jimmy Mitchell stated he would kill the complainant if he came to court and that he would also kill Steve, himself. Steve Evans further stated that Jimmy Mitchell told him that he could have killed the complainant and his wife on the night in question but that he did not want to.

The defendants presented an alibi defense a trial. The defendants and other family members all testified that the defendants had been at the police station from 10 o'clock in the morning until approximately 8:30 in the evening of November 22, 1975, on an unrelated altercation with the Evans family which had occurred at a wedding earlier in November of 1975. The defendants and their friends had all returned to Anna Mitchell's residence at about 9 p.m. on November 22, where they all had remained until somewhere around 1:30 a.m. on November 23, 1975. The defense also presented various testimony concerning the disaffection which existed between the defendants' and complainant's Gypsy families.

The defense first contends that the trial court erroneously denied the State's motion to reduce the convictions of Jimmy and Steven Mitchell from armed robbery to robbery. The defense's contention is two-fold: First, that the convictions of Jimmy and Steven Mitchell for armed robbery are inconsistent

both legally and factually in light of the other three defendants' convictions for only robbery; and second, that the State's request was in essence a motion to nolle prosse these charges after trial, which is within the State's power.

The principles in regard to inconsistency in verdicts are well settled. Generally, where there is a minimal difference in evidence relating to two persons who are tried together, the trier of fact may properly weigh the evidence and make the requisite allowance for such differences, and the acquittal of one is not grounds for reversal of conviction of the other. (*People* v. *Patrick* (1976), 41 Ill. App. 3d 1037, 355 N. E. 2d 224.) Similarly, it is only where the evidence in regard to each defendant is identical that the conviction of one and acquittal of the other can be said to be so inconsistent as to require reversal of a conviction on review. *People* v. *Hardemon* (1977), 46 Ill. App. 3d 1052, 361 N. E. 2d 680.

We think it is obvious that the evidence as to Jimmy and Steven Mitchell was not identical to that of the other three defendants. Jimmy Mitchell was identified by the complainant as having pointed a rifle at his head, threatened to kill the complainant, and then shot out a tire. Likewise, the complainant positively identified Steven Mitchell as the other person of the quintet who had a rifle during the robbery. On the contrary, the role of the other three defendants was passive and different from that of the other armed robbers. Under these circumstances, where the evidence was not identical in all respects as to all the defendants, the trial court was not barred from finding Jimmy and Steven Mitchell guilty of armed robbery where the evidence supported such a determination beyond a reasonable doubt. *People* v. *Stock* (1974), 56 Ill. 2d 461, 309 N. E. 2d 19.

Secondly, the defendants contend that the State's post-trial motion was essentially a *nolle prosequi* motion as to the charges against Jimmy and Steven Mitchell. Prior to a discussion of the legal principles involved with this issue, it would be instructive to set forth the motion as it was presented by the State:

> "Mr. Woods: Your Honor, it would be the motion of the State at this time on the cases of Leo [*sic*] and Jimmy who were convicted of armed robbery. It would be the *motion of the State* at this time *that the charge be amended or reduced to robbery.*
>
> The Court: What is the basis of your motion? They stand convicted after a trial which was contested and the State presented evidence vigorously on an armed robbery, the court convicted them on the basis of that evidence. What is the basis for request of reduction after conviction?
>
> Mr. Woods: Your Honor, I did prosecute it because I thought that it did happen. I think there are extenuating circumstances considering the relationship of the two parties. *I think in the interest of justice that the State would be better served by reducing it to robbery. I believe that a robbery did occur and I believe that would be the more proper sentence on the charge.* I have nothing further, Your Honor.
>
> The Court: Do you believe that the evidence and the findings of the court were in error at the time of the trial?
>
> Mr. Woods: No, Your Honor." (Emphasis supplied.)

The scope and purpose of a *nolle prosequi* was ably stated in *People* v. *Watson* (1946), 394 Ill. 177, 179, 68 N. E. 2d 265, 266, *cert. denied* (1946), 329 U. S. 769, 91 L. Ed. 662, 67 S. Ct. 130, wherein the court stated:

> " 'A *nolle prosequi* is not a final disposition of the case, and will not bar another prosecution for the same offense. It is not an acquittal, but it is like a nonsuit or discontinuance in a civil suit, and leaves the matter in the same condition in which it was before the commencement of the prosecution.' [Citation.] Again, it has been said that the ordinary effect of a *nolle prosequi* is to terminate the charge to which it is entered and to permit the defendant to go wherever he pleases, without entering into a recognizance to appear at any other time."

The State's motion in the present case, if granted by the trial court, would have resulted in final dispositional orders of acquittal as to Jimmy and Steven Mitchell on the armed robbery charges. It also would have barred other prosecutions for armed

robbery and would have resulted in the defendants' being convicted for "straight" robbery. We believe to characterize such a motion by the State as a *nolle prosequi* would be ludicrous and contrary to the well-accepted concept of a *nolle prosequi* set forth above. The State's verbal motion, in our opinion, is more analogous to a motion to vacate judgment of guilt on the armed robbery and enter judgment on the lesser included charge of robbery. The State did not believe that the evidence and findings of the court on the armed robbery were in error at the time of trial, but nonetheless, it was of the opinion that a sentence on a robbery conviction would be more proper for Jimmy and Steven Mitchell. Under these circumstances, the trial court properly denied the State's motion to reduce these charges. Further, we believe the trial court thoroughly considered the State's position as to the armed robbery offenses in its imposition of relatively light sentences imposed on Jimmy and Steven Mitchell. Accordingly, the trial court did not err in denying the State's post-trial motion.

The defendants next argue that the trial court erred in limiting the cross-examination of the State's key witness, Lee Evans, to only events that occurred before the Tollway incident. The defense contends that the trial court should have permitted cross-examination of Lee Evans concerning those incidents which allegedly ensued after the occurrence in order to demonstrate the witness' bias toward the defendants. The State in rebuttal asserts that the defense has not properly preserved this contention on review because its motion for a new trial did not include the alleged error. Alternatively, the State maintains that the trial court's ruling was not an abuse of sound judicial discretion.

Initially we note our agreement with the State that the defendants have waived this contention because this alleged error was not raised in their post-trial motion for a new trial. (*People* v. *Limas* (1977), 45 Ill. App. 3d 643, 359 N. E. 2d 1194.) However, even assuming arguendo that this issue was properly preserved, defendants' position still lacks merit. Our supreme

court recently noted in *People* v. *Williams* (1977), 66 Ill. 2d 478, 363 N. E. 2d 801, quoting from *People* v. *Burris* (1971), 49 Ill. 2d 98, 104, 273 N. E. 2d 605, 610:

> " 'The extent of cross-examination with respect to an appropriate subject of inquiry rests in the sound discretion of the trial court. It is only in the case of a clear abuse of such discretion resulting in manifest prejudice to the defendant that a court of review will interfere.' " (66 Ill. 2d 478, 487, 363 N. E. 2d 801, 805.)

Herein, it is apparent that further cross-examination of Lee Evans concerning post-crime incidents would not have added one scintilla of evidence regarding the bias of this witness. It is obvious from our reading of this record that these parties harbored a great deal of hostility and bad blood toward each other which antedated this criminal activity on the Tollway. In fact, the defendants' family and Lee Evans' family had had an altercation at a wedding only six days before this incident. Under these circumstances, we believe the trial court was aware of Lee Evans' possible bias toward the defendants, that further testimony to this effect would have been cumulative, and that the trial court did not abuse its sound judicial discretion by limiting the cross-examination of this witness to events preceding the Tollway occurrence.

Thirdly, the defendants contend that the evidence was insufficient to prove their guilt beyond a reasonable doubt. Basically, defendants attack the credibility of the State's main witness, Lee Evans, whose testimony they feel was substantially discredited at trial by numerous witnesses, including the defendants. In addition, the defendants point to the statement of Elmer Fox, a Chicago police officer, who testified that it was common practice for Gypsies to file frivolous criminal charges against each other.

It is well settled that the testimony of a single identification witness, if positive and credible, is sufficient to uphold a conviction on appeal, even if such testimony is contradicted by the

accused, provided the witness viewed the accused under conditions which would permit a positive identification to be made. (*People* v. *Manion* (1977), 67 Ill. 2d 564, 367 N. E. 2d 1313; *People* v. *White* (1978), 56 Ill. App. 3d 757, 372 N. E. 2d 691.) Generally, in a bench trial, the trial judge as the trier of fact is in the superior position to determine the credibility and weight to be given the witnesses' testimony, and a court of review will not substitute its judgment unless the evidence is so unsatisfactory as to raise a reasonable doubt of the defendant's guilt. *People* v. *Boykin* (1977), 54 Ill. App. 3d 220, 369 N. E. 2d 219.

In the instant case, we are not convinced that Lee Evans' testimony was so incredible as to cast doubt upon the trial court's judgment. Certainly, Lee Evans' lifestyle, as well as that of the defendants, is not atypical in today's society. However, Evans' testimony throughout the trial was consistent and credible in his accusation of the defendants as the perpetrators of the events on the Illinois Tollway. Further, we do not believe that Officer Fox's sweeping generalizations as to the idiosyncrasies and practices of Gypsies were entitled to great weight by the trial court. Likewise, the defendants' alibis and supportive witnesses were not so persuasive as to impel us to reverse the trial court's judgment. The trial court viewed these witnesses, their testimony, as well as their candid animosities toward one another, throughout the course of this trial and determined that the credibility and weight of this testimony was in favor of the State and against these defendants. Our review of the record substantiates such a conclusion. Accordingly, we find that the defendants were proved guilty beyond a reasonable doubt.

The defendants' final contention is that the trial court abused its discretion when it denied their motion for a new trial. Defendants' post-trial motion was grounded on newly discovered evidence which consisted of a witness, Mrs. Veronica Gabrielle, who said she saw Leo Mitchell at a tavern, called Sunday's Tavern, in Chicago at the time of the alleged robbery. Defend-

ants contend that they exercised due diligence in attempting to locate Mrs. Gabrielle but that they had been unable to locate her during subsequent trips back to the bar until after the trial. Defendants argue that this newly discovered evidence, which was corroborative of defendant Leo Mitchell's claimed activities on this night, would have changed the result of all the defendants on retrial. We disagree.

The well-settled criteria used by Illinois courts in their evaluations of requests for new trials based on newly discovered evidence are as follows: the evidence must be of such a character that it will probably change the verdict on re-trial; the evidence is pertinent to an issue raised at trial and is not merely cumulative; the evidence was discovered following the trial and be of such a nature that it could not have been discovered before trial by the exercise of due diligence. (*People* v. *Baker* (1959), 16 Ill. 2d 364, 158 N. E. 2d 1; *People* v. *Whittaker* (1978), 56 Ill. App. 3d 430, 373 N. E. 2d 30.) In addition, the defendant has the burden to rebut the presumption that the verdict was proper, and the trial court's denial of a new trial based on the above grounds will be overturned on appeal only if there has been a manifest abuse of discretion. *People* v. *Holtzman* (1953), 1 Ill. 2d 562, 116 N. E. 2d 338; *People* v. *Wolf* (1977), 48 Ill. App. 3d 736, 363 N. E. 2d 402.

In the application of these standards, our review of the record discloses that the asserted newly discovered evidence would not have changed the trial court's judgment in this cause. The defendants had already presented numerous alibi witneses who had testified concerning their whereabouts on the night in question. Under the circumstances here, we believe that this testimony was merely cumulative to these other alibi witnesses and would not have likely altered the result on retrial. Therefore, we hold that the trial court did not abuse its discretion in denying the defendants' motion for a new trial based on this evidence.

For the above recited reasons the judgments of the circuit court of Ogle County are affirmed.

Judgments affirmed.

NASH and WOODWARD, *JJ.*, concur.